



# Pre-Construction Prohibition Waiver

Air Pollution Control Program fact sheet

2/2006

Construction permits are required for the construction of new air pollution sources, or the modification of existing air emission sources, prior to commencement of construction. Under certain conditions a facility may request a waiver, or variance, from this requirement prior to beginning construction in accordance with 10 CSR 10-6.060(1)(C). In order to qualify for a pre-construction prohibition waiver, a facility must meet all of the requirements on the following checklist. In particular, projects subject to section (7) or (8) or (9) reviews, without permit conditions, are not eligible for a waiver. If a pre-construction prohibition waiver is granted, construction on the facility may begin prior to the granting of the permit. Every effort is made to process these waivers in a timely manner.

The company receiving the waiver can not operate the constructed unit until, or unless, a valid permit is issued. In addition, the company receiving a waiver risks the expense and inconvenience of not being able to operate should the department decide to deny the permit.

To process an applicant's request for a pre-construction waiver the applicant should write a letter or include in their application the following information or statements:

- The applicant acknowledges that the project requested is not or will not be "major" (will not be subject to section (7) or (8) of 10 CSR 10-6.060, or Part C or D of the Act);
- The applicant states that construction at the site has not begun;
- The applicant accepts all liability associated with the possible denial of the permit application;
- The proposed schedule of construction activities has been provided; and
- The permit application has been submitted.

A sample letter is attached.

## Questions

Copies of the rules for the Permit Program may be obtained for a \$25 fee through the Secretary of State's Office at (573) 751-4015. Please ask for Missouri State Rules Title 10, Division 10 (10 CSR 10).

## For more information

Missouri Department of Natural Resources  
Air Pollution Control Program  
New Source Review Unit  
P.O. Box 176, Jefferson City, MO 65102-0176  
1-800-361-4827 or (573) 751-4817 office  
(573) 751-2706 fax  
[www.dnr.mo.gov/env/apcp/index.html](http://www.dnr.mo.gov/env/apcp/index.html)



**Pre - Construction Prohibition Waiver - Sample letter for Pre-Construction Waiver Request - Retype on company letterhead, and submit with signature of responsible official.**

RE: Pre-construction Prohibition Waiver

Dear Sirs:

Our company is requesting a waiver from the restriction to commence construction per the following rule reference:

10 CSR 10-6.060(1)(C). Construction/Operation Prohibited. No owner or operator shall commence construction or modification of any installation subject to this rule, begin operation after that construction or modification, or begin operation of any installation which has been shut down longer than five (5) years without first obtaining a permit from the permitting authority under this rule. For sources not subject to review under sections (7), (8), or (9), construction may be commenced if authorized by the director. A request for authorization must include: a signed waiver of any state liability; a complete list of activities to be undertaken; and, the applicant's full acceptance and knowledge of all liability associated with the possibility of denial of the permit application. A request will not be granted unless an application for permit approval under this rule has been filed. The waiver is not available to sources seeking federally enforceable permit restrictions to avoid review under sections (7)-(9).

I am the responsible official for the company as defined:

10 CSR 10-6.020(2)(R)12. Responsible official-Includes one of the following:

- A. The president, secretary, treasurer, or vice-president of a corporation in charge of a principal business function, or any other person who performs similar policy and decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
  - (I) the facilities employ more than two hundred and fifty (250) persons or have a gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second quarter 1980 dollars); or
  - (II) the delegation of authority to such a representative is approved in advance by the permitting authority;
- B. A general partner in a partnership or the proprietor in a sole proprietorship;
- C. Either a principal executive officer or ranking elected official in a municipality, state, federal, or other public agency. For the purpose of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
- D. The designated representative of an affected source in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and the designated representative for any other purposes under part 70.

Construction related to this project has not begun. Our company understands fully, after reasonable inquiry, the consequences of beginning construction. Our company releases the state from any liability concerning the costs to the company for beginning construction should the state deny the application now pending for this project. I have included a detailed list of the construction activities and the associated schedule for each activity to be at the project site. Thank you in advance for your consideration of this waiver.

Sincerely,